

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into as of this 4th day of April, 2016, by and between: (1) the State of West Virginia, *ex rel.* Patrick Morrissey, Attorney General (the "State"); and (2) Rite Aid of West Virginia, Inc. ("Rite Aid"), a West Virginia corporation.

Recitals

This Agreement is made and entered into with regard to the following facts:

WHEREAS, on or about July 23, 2009, the State commenced an action against Rite Aid that currently is pending in the Circuit Court of Boone County, West Virginia (the "Court") and is entitled *State of West Virginia, ex rel. Patrick Morrissey, Attorney General v. Rite Aid of West Virginia*, Civil Action No. 09-C-217 (Hon. William S. Thompson, Judge) (the "Action"); and

WHEREAS, in the Action, the State has alleged that Rite Aid has: (1) failed to comply with the provisions of the West Virginia Pharmacy Act ("Pharmacy Act") set forth in West Virginia Code §30-5-12b(g), which provides in part that in connection with the operation of a pharmacy in West Virginia under the circumstances stated in the statute, "All savings in the retail prices of the [generic] prescription shall be passed on to the purchaser," and "in no event shall such savings be less than the difference in acquisition cost of the brand name product prescribed and the acquisition cost of the substituted product"; and (2) as a result of its alleged failure to comply with West Virginia Code §30-5-12b(g), has failed to comply with the provisions of the West Virginia Consumer Credit and Protection Act ("CCPA") set forth in West Virginia Code §46A-6-104 and §46A-7-111(1); and

WHEREAS, Rite Aid has denied and continues to deny the allegations made by the State, and maintains that it has not violated either the Pharmacy Act or the CCPA; and

WHEREAS, Rite Aid has agreed to implement and operate a program that it believes will accomplish compliance with West Virginia Code §30-5-12b(g) (the "Compliance Program"); and

WHEREAS, the State believes that the Compliance Program will be sufficient to ensure compliance with West Virginia Code §30-5-12b(g); and

WHEREAS, the State and Rite Aid are desirous of settling the Action in order to avoid the distraction and expense of ongoing litigation and to maintain good relations between them;

NOW, THEREFORE, for the valuable consideration described below, the receipt and sufficiency of which hereby are expressly acknowledged, the undersigned parties mutually agree as follows:

Agreements

1. The State and Rite Aid shall enter into a Dismissal Order in the form that is attached hereto as Exhibit 1, and shall submit the Dismissal Order to the Court for approval. Rite Aid shall pay the total amount of Four Million Nine Hundred Thousand Dollars (\$4,900,000.00) ("Settlement Payment") by wire transfer to the Bailey & Glasser LLP Trust Account, as counsel for Plaintiff, within thirty ("30") days of the date of the Court's order of dismissal or ten (10) days from the date on which Rite Aid received an IRS Form W-9 from the Plaintiff, whichever occurs later. Bailey & Glasser LLP shall hold the Settlement Payment in trust until such time as its disbursement has been directed by further order of this Court. The Settlement Payment constitutes the total payment Rite Aid is required to make in connection

with this Settlement Agreement, and Rite Aid shall have no responsibility or liability for the disposition of the Settlement Payment once it has transferred the funds to Bailey and Glasser LLP as set forth above.

2. Not later than twenty four ("24") months after the date of this Agreement, Rite Aid shall implement and operate a Compliance Program, as follows: Rite Aid shall conduct a quarterly review of its relevant generic-drug transactions at its West Virginia stores to cash paying customers and shall determine the average retail price and average acquisition cost for each generic drug it dispenses to these cash paying customers. Rite Aid will then review its brand-drug transactions to cash paying customers in West Virginia for the same quarter to identify equivalent brand transactions, if any, of the dispensed generics. Rite Aid will then compare the average generic acquisition cost and average generic retail price with the acquisition cost and retail price for the equivalent brand transaction, and shall measure its compliance in accordance with West Virginia Code § 30-5-12b(f) and (g). For quarters where there were corresponding generic and brand transactions, If Rite Aid determines there is non-compliance it will adjust its retail pricing to achieve compliance, unless such non-compliance is *de minimis*. Rite Aid's Compliance Program is limited to those customers whose transactions are not covered by insurance. The State and Rite Aid agree that Rite Aid has no obligation to maintain a compliance program related to transactions covered by a third party payor, Medicare, Medicaid, discount program or any similar outside payor.

3. Rite Aid's obligation to maintain the Compliance Program will continue for so long as West Virginia Code § 30-5-12b(f) and (g) remain in force and effect in their current form, or for ten ("10") years from the date of execution of this Settlement

Agreement, whichever occurs sooner. If in the future Rite Aid's business systems change significantly so as to make it feasible for Rite Aid to achieve compliance with West Virginia Code § 30-5-12b(f) and (g) using different processes than those described in paragraph 2, then Rite Aid may achieve compliance through such processes, provided that it provides advance written notice to the State of its intent to employ such different processes.

4. Upon entry of the Dismissal Order and the payment by Rite Aid of the Settlement Payment, the State, on its own behalf and on behalf of its departments, agencies, regulatory boards, and instrumentalities and any person, in their official capacity, elected or appointed to serve the State (all of the foregoing collectively are "Releasors"), shall be deemed to have released and forever discharged Rite Aid, and all and each of its past and present affiliated and related corporations and entities, their respective predecessors and successors in interest, and all and each of their respective past and present officers, directors, employees, agents, representatives, insurers, attorneys, consultants, indemnitors, and assigns (all of the foregoing collectively are "Released Parties"), of and from any and all claims, liabilities, demands, actions, and causes of action, of every kind and nature whatsoever, whether known or unknown, existing or not existing, asserted or unasserted, liquidated or unliquidated, absolute or contingent, in law or in equity, which the Releasors have ever had, presently have, or may have or claim to have, against the Released Parties, or any of them, by reason of any of the events, occurrences, allegations, and claims for relief set forth in any pleading, discovery response, motion, or brief in the Action; PROVIDED, that nothing in this Agreement shall operate or be construed as a

waiver or release by the State of any of Rite Aid's obligations under the Dismissal Order or of any claims arising thereunder; PROVIDED, further, that nothing in this Agreement shall operate or be construed as a waiver or release by the State of any claims, liabilities, demands, actions, or causes of action against Walgreen Co. or any defendant in Civil Action No. 09-C-226, pending in the Circuit Court of Boone County, West Virginia, or against any other pharmacy in the State of West Virginia. However, Releasors do release Walgreen Co, and its related and its affiliated entities from successor liability for any claims or causes of actions in any way related to Rite Aid which have otherwise been released in this Agreement.

5. This Agreement is subject to, and contingent upon: (a) the entry of the Dismissal Order in the form attached hereto as Exhibit 1 by the Court; (b) the dismissal from the Action with prejudice and on the merits, each party to bear its own attorneys' fees and costs, of all claims that were or could have been asserted therein against Rite Aid; and (c) Rite Aid's payment of the Settlement Payment (the three foregoing events collectively are "the Contingency Events"). This Agreement is not contingent upon how, when, or to whom the Court orders disbursement of the Settlement Payment. If any of the Contingency Events does not occur, then: (a) this Agreement shall be null, void, and of no effect whatsoever; (b) the parties shall revert to their respective statuses as of immediately prior to the execution of this Agreement; and (c) the Action shall proceed as to Rite Aid as if this Agreement had never been made.

6. It is expressly acknowledged and agreed that Rite Aid at all times has denied and still denies liability for the events, occurrences, allegations, and claims for relief set

forth in the Action, and that the consideration provided to the State is provided and accepted in compromise and full settlement of disputed claims. Neither this Agreement nor the settlement provided herein is, may be construed as, or may be used as, an admission by or against Rite Aid of any fault, wrongdoing, or liability whatsoever.

7. Pursuant to the terms of the Stipulation and Protective Order entered into between the Parties, within sixty (60) days after entry of the Dismissal Order, each party shall, at the request of the opposing party (a) return all "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information and documents in his/her possession, custody, or control, or in the custody of any authorized agents, outside experts, and consultants retained or utilized by such counsel, to counsel for the producing party; or (b) certify destruction thereof to the producing party's counsel. As to "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information reflected in computer databases or backup tapes or any other electronic form, the receiving party shall erase all such "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information.

8. This Agreement constitutes the entire agreement of the undersigned parties concerning the subject matter hereof. It may not be supplemented or changed orally.

9. No breach of any provision of this Agreement by any party hereto can be waived by any other party hereto, unless expressly done so in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provisions hereof.

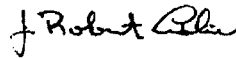
10. The undersigned parties and their respective counsel have reviewed this Agreement, and the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

11. This Agreement shall be binding upon, and shall inure to the benefit of, the successors and assigns of the parties hereto.

12. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of West Virginia.

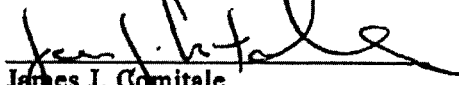
13. This Agreement may be executed in counterparts, each of which shall be deemed to be one and the same instrument. The undersigned parties shall exchange original signed counterparts.

STATE OF WEST VIRGINIA



James R. Leslie
Senior Deputy Attorney General
OFFICE OF THE ATTORNEY GENERAL
Building 1, Room 26-ECapitol Complex
Charleston, WV 25305
(304) 558-2021
(304) 558-0140 facsimile

RITE AID OF WEST VIRGINIA, INC.



James J. Comitale
Senior Vice President

IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, ex rel.
PATRICK MORRISEY,
ATTORNEY GENERAL,

Plaintiff,

CIVIL ACTION NO. 09-C-0217

v.

RITE AID OF WEST VIRGINIA, INC.,
a West Virginia corporation,

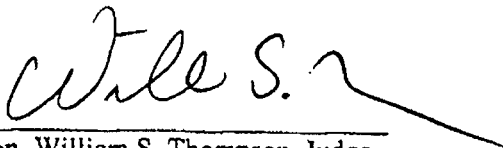
Defendant.

AMENDED DISMISSAL ORDER

Plaintiff and Defendant Rite Aid of West Virginia, Inc. have advised the Court by counsel that this matter has been settled and compromised by and amongst those parties. Therefore, by agreement of the parties, it is hereby **ORDERED** that this matter be, and hereby is, **DISMISSED WITH PREJUDICE**. This Court retains jurisdiction of this matter solely with respect to the disbursement of any settlement proceeds, including attorney's fees.


The Circuit Clerk is directed to forward copies of this Order to all counsel of record.

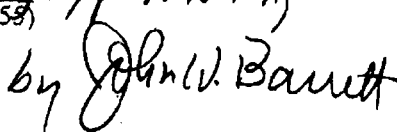
ENTERED this 4th day of April, 2016.


Hon. William S. Thompson, Judge

Prepared by:

LEWIS, GLASSER, CASEY &
ROLLINS, PLLC


Webster J. Arceneaux, III (WV Bar No. 159)
Lewis, Glasser, Casey & Rollins, PLLC
Post Office Box 1746
Charleston, West Virginia 25326
(304) 345-2000

w/permission,
by 

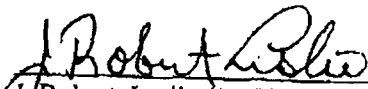
BOONE COUNTY
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MILLER, CANFIELD, PADDOCK AND STONE, PLC.

Todd A. Holleman (*pro hac vice*)
Robert L. DeJong (*pro hac vice*)
Attorneys for Defendant
150 West Jefferson, Suite 2500
Detroit, MI 48226
313-963-6420

*Attorneys for Defendant Rite Aid of West
Virginia, Inc.*

Approved by:



J. Robert Leslie (WV Bar No. 6341)
Deputy Attorney General
OFFICE OF THE ATTORNEY GENERAL
Building 1, Room 26-E, Capitol Complex
Charleston, WV 25305
(304) 558-2021
(304) 558-0140 facsimile

Brian A. Glasser (WV Bar No. 6597)
John W. Barrett (WV Bar No. 7289)
Michael B. Hissam (WV Bar No. 11526)
BAILEY & GLASSER LLP
209 Capitol Street
Charleston, WV 25301
(304) 345-6555
(304) 342-1110 facsimile

Joshua I. Barrett (WV Bar No. 252)
Sean P. McGinley (WV Bar No. 5836)
DiTRAPANO, BARRETT & DiPIERO, PLLC
604 Virginia Street East
Charleston, WV 25301
(304) 342-0133
(304) 342-4605 facsimile

Attorneys for the State of West Virginia